

HOUSE BILL No. 1494

DIGEST OF INTRODUCED BILL

Citations Affected: IC 13-11; IC 13-18-10; IC 13-23-13.

Synopsis: Regulation of confined feeding operations. Amends the law on confined feeding operations (CFOs, which include any confined feeding of at least 300 cattle, 600 swine or sheep, 30,000 fowl, or 500 horses). Replaces the current prohibition against starting construction or expansion of a CFO without the prior approval of the department of environmental management (IDEM) with the requirement that a person obtain a permit to construct and operate a confined feeding operation. Requires a permit holder to obtain a new permit or a permit amendment from IDEM before constructing or expanding a manure storage facility. Requires a permit amendment under certain circumstances, requires the submission of a facility change notification to IDEM under certain circumstances, and requires the construction of additional manure storage under certain circumstances.

Effective: July 1, 2017.

Wolkins

January 18, 2017, read first time and referred to Committee on Environmental Affairs.



First Regular Session of the 120th General Assembly (2017)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2016 Regular Session of the General Assembly.

HOUSE BILL No. 1494

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 13-11-2-126.7 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2017]: **Sec. 126.7. (a) "Manure storage**
4 **facility", for purposes of IC 13-18-10, means any:**
5 (1) pad;
6 (2) pit;
7 (3) pond;
8 (4) lagoon;
9 (5) tank;
10 (6) building; or
11 (7) manure containment area;
12 **that is used to store or treat manure.**
13 **(b) The term includes:**
14 (1) a biomass digester; and
15 (2) any part of a building that is used specifically for the
16 storage or treatment of manure.
17 SECTION 2. IC 13-11-2-148, AS AMENDED BY P.L.6-2012,



1 SECTION 100, IS AMENDED TO READ AS FOLLOWS
 2 [EFFECTIVE JULY 1, 2017]: Sec. 148. (a) "Operator", for purposes of
 3 **section 191 of this chapter and IC 13-18-10**, means the person in
 4 direct or responsible charge ~~or control~~ of **compliance with permit**
 5 **requirements for** one (1) or more confined feeding operations. **The**
 6 **term may include a permit holder.**

7 (b) "Operator", for purposes of IC 13-18-11 and environmental
 8 management laws, means the person in direct or responsible charge and
 9 supervising the operation of:

- 10 (1) a water treatment plant;
 11 (2) a wastewater treatment plant; or
 12 (3) a water distribution system.

13 (c) "Operator", for purposes of IC 13-20-6, means a corporation, a
 14 limited liability company, a partnership, a business association, a unit,
 15 or an individual who is a sole proprietor that is one (1) of the following:

- 16 (1) A broker.
 17 (2) A person who manages the activities of a transfer station that
 18 receives municipal waste.
 19 (3) A transporter.

20 (d) "Operator", for purposes of IC 13-23, except as provided in
 21 subsections (e), (g), and (h), means a person:

- 22 (1) in control of; or
 23 (2) having responsibility for;

24 the daily operation of an underground storage tank.

25 (e) "Operator", for purposes of IC 13-23-13, does not include the
 26 following:

- 27 (1) A person who:
 28 (A) does not participate in the management of an underground
 29 storage tank;
 30 (B) is otherwise not engaged in the:
 31 (i) production;
 32 (ii) refining; and
 33 (iii) marketing;
 34 of regulated substances; and
 35 (C) holds evidence of ownership, primarily to protect the
 36 owner's security interest in the tank.

37 (2) A person that is a lender that did not participate in
 38 management of an underground storage tank before foreclosure,
 39 notwithstanding that the person:

- 40 (A) forecloses on the vessel or facility; and
 41 (B) after foreclosure, sells, re-leases (in the case of a lease
 42 finance transaction), or liquidates the underground storage



- 1 tank, maintains business activities, winds up operations,
 2 undertakes a response action under Section 107(d)(1) of
 3 CERCLA (42 U.S.C. 9607(d)(1)) or under the direction of an
 4 on-scene coordinator appointed under the National
 5 Contingency Plan with respect to the underground storage
 6 tank, or takes any other measure to preserve, protect, or
 7 prepare the underground storage tank prior to sale or
 8 disposition;
- 9 if the person seeks to sell, re-lease (in the case of a lease finance
 10 transaction), or otherwise divest the person of the underground
 11 storage tank at the earliest practicable, commercially reasonable
 12 time, on commercially reasonable terms, taking into account
 13 market conditions and legal and regulatory requirements.
- 14 (3) A person who:
- 15 (A) does not own or lease, directly or indirectly, the facility or
 16 business at which the underground storage tank is located;
 17 (B) does not participate in the management of the facility or
 18 business described in clause (A); and
 19 (C) is engaged only in:
- 20 (i) filling;
 21 (ii) gauging; or
 22 (iii) filling and gauging;
- 23 the product level in the course of delivering fuel to an
 24 underground storage tank.
- 25 (4) A political subdivision (as defined in IC 36-1-2-13) or unit of
 26 federal or state government that:
- 27 (A) acquires ownership or control of an underground storage
 28 tank on a brownfield because of:
- 29 (i) bankruptcy;
 30 (ii) foreclosure;
 31 (iii) tax delinquency, including an acquisition under
 32 IC 6-1.1-24 or IC 6-1.1-25;
 33 (iv) abandonment;
 34 (v) the exercise of eminent domain, including any purchase
 35 of property once an offer to purchase has been tendered
 36 under IC 32-24-1-5;
 37 (vi) receivership;
 38 (vii) transfer from another political subdivision or unit of
 39 federal or state government;
 40 (viii) acquiring an area needing redevelopment (as defined
 41 in IC 36-7-1-3) or conducting redevelopment activities,
 42 specifically under IC 36-7-14-22.2, IC 36-7-14-22.5,



1 IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and
2 IC 36-7-15.1-15.5;

3 (ix) other circumstances in which the political subdivision
4 or unit of federal or state government involuntarily acquired
5 an interest in the property because of the political
6 subdivision's or unit's function as sovereign; or

7 (x) any other means to conduct remedial actions on a
8 brownfield; and

9 (B) is engaged only in activities in conjunction with:

10 (i) investigation or remediation of hazardous substances,
11 petroleum, and other pollutants associated with a
12 brownfield, including complying with land use restrictions
13 and institutional controls; or

14 (ii) monitoring or closure of an underground storage tank;
15 unless existing contamination on the brownfield is exacerbated
16 due to gross negligence or intentional misconduct by the
17 political subdivision or unit of federal or state government.

18 (f) For purposes of subsection (e)(4)(B), reckless, willful, or wanton
19 misconduct constitutes gross negligence.

20 (g) "Operator" does not include a person that after June 30, 2009,
21 meets, for purposes of the determination under IC 13-23-13 of liability
22 for a release from an underground storage tank, the exemption criteria
23 under Section 107(q) of CERCLA (42 U.S.C. 9607(q)) that apply for
24 purposes of the determination of liability for a release of a hazardous
25 substance.

26 (h) "Operator" does not include a person that meets, for purposes of
27 the determination under IC 13-23-13 of liability for a release from an
28 underground storage tank, the exemption criteria under Section 107(r)
29 of CERCLA (42 U.S.C. 9607(r)) that apply for purposes of the
30 determination of liability for a release of a hazardous substance, except
31 that the person acquires ownership of the facility after June 30, 2009.

32 SECTION 3. IC 13-11-2-150, AS AMENDED BY P.L.159-2011,
33 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
34 JULY 1, 2017]: Sec. 150. (a) **"Owner", for purposes of section 191
35 of this chapter and IC 13-18-10 (except for IC 13-18-10-1.1(c)(2)
36 and IC 13-18-10-2(b)(2)), means the person that owns the waste
37 management system at a confined feeding operation. The term may
38 include a permit holder.**

39 ~~(a)~~ (b) "Owner", for purposes of IC 13-23 (except as provided in
40 subsections ~~(b)~~, (c), (d), (e), (f), (g), and ~~(g)~~ (h)) means:

41 (1) for an underground storage tank that:

42 (A) was:



- 1 (i) in use on November 8, 1984; or
 2 (ii) brought into use after November 8, 1984;
 3 for the storage, use, or dispensing of regulated substances, a
 4 person who owns the underground storage tank or the real
 5 property that is the underground storage tank site, or both; or
 6 (B) was:
 7 (i) in use before November 8, 1984; but
 8 (ii) no longer in use on November 8, 1984;
 9 a person who owned the tank immediately before the
 10 discontinuation of the tank's use; or
 11 (2) a person who conveyed ownership or control of the
 12 underground storage tank to a political subdivision (as defined in
 13 IC 36-1-2-13) or unit of federal or state government because of:
 14 (A) bankruptcy;
 15 (B) foreclosure;
 16 (C) tax delinquency, including a conveyance under
 17 IC 6-1.1-24 or IC 6-1.1-25;
 18 (D) abandonment;
 19 (E) the exercise of eminent domain, including any purchase of
 20 property once an offer to purchase has been tendered under
 21 IC 32-24-1-5;
 22 (F) receivership;
 23 (G) acquiring an area needing redevelopment (as defined in
 24 IC 36-7-1-3) or conducting redevelopment activities,
 25 specifically under IC 36-7-14-22.2, IC 36-7-14-22.5,
 26 IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;
 27 (H) other circumstances in which a political subdivision or
 28 unit of federal or state government involuntarily acquired
 29 ownership or control because of the political subdivision's or
 30 unit's function as sovereign; or
 31 (I) any other means to conduct remedial actions on a
 32 brownfield;
 33 if the person was a person described in subdivision (1)
 34 immediately before the person conveyed ownership or control of
 35 the underground storage tank.
 36 ~~(b)~~ (c) "Owner", for purposes of IC 13-23-13, does not include a
 37 person who:
 38 (1) does not participate in the management of an underground
 39 storage tank;
 40 (2) is otherwise not engaged in the:
 41 (A) production;
 42 (B) refining; and



1 (C) marketing;
 2 of regulated substances; and
 3 (3) holds indicia of ownership primarily to protect the owner's
 4 security interest in the tank.

5 ~~(c)~~ (d) "Owner", for purposes of IC 13-23, does not include a person
 6 that is a lender that did not participate in management of an
 7 underground storage tank before foreclosure, notwithstanding that the
 8 person:

9 (1) forecloses on the underground storage tank; and
 10 (2) after foreclosure, sells, re-leases (in the case of a lease finance
 11 transaction), or liquidates the underground storage tank, maintains
 12 business activities, winds up operations, undertakes a response
 13 action under Section 107(d)(1) of CERCLA (42 U.S.C.
 14 9607(d)(1)) or under the direction of an on-scene coordinator
 15 appointed under the National Contingency Plan with respect to
 16 the underground storage tank, or takes any other measure to
 17 preserve, protect, or prepare the underground storage tank prior
 18 to sale or disposition;

19 if the person seeks to sell, re-lease (in the case of a lease finance
 20 transaction), or otherwise divest the person of the underground storage
 21 tank at the earliest practicable, commercially reasonable time, on
 22 commercially reasonable terms, taking into account market conditions
 23 and legal and regulatory requirements.

24 ~~(d)~~ (e) "Owner", for purposes of IC 13-23, does not include a
 25 political subdivision (as defined in IC 36-1-2-13) or unit of federal or
 26 state government that acquired ownership or control of an underground
 27 storage tank because of:

28 (1) bankruptcy;
 29 (2) foreclosure;
 30 (3) tax delinquency, including an acquisition under IC 6-1.1-24 or
 31 IC 6-1.1-25;
 32 (4) abandonment;
 33 (5) the exercise of eminent domain, including any purchase of
 34 property once an offer to purchase has been tendered under
 35 IC 32-24-1-5;
 36 (6) receivership;
 37 (7) transfer from another political subdivision or unit of federal or
 38 state government;
 39 (8) acquiring an area needing redevelopment (as defined in
 40 IC 36-7-1-3) or conducting redevelopment activities, specifically
 41 under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1,
 42 IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;



1 (9) other circumstances in which the political subdivision or unit
 2 of federal or state government involuntarily acquired ownership
 3 or control because of the political subdivision's or unit's function
 4 as sovereign; or

5 (10) any other means to conduct remedial actions on a
 6 brownfield;

7 unless the political subdivision or unit of federal or state government
 8 causes or contributes to the release or threatened release of a regulated
 9 substance, in which case the political subdivision or unit of federal or
 10 state government is subject to IC 13-23 in the same manner and to the
 11 same extent as a nongovernmental entity under IC 13-23.

12 ~~(e)~~ (f) "Owner", for purposes of IC 13-23, does not include a
 13 nonprofit corporation that acquired ownership or control of an
 14 underground storage tank to assist and support a political subdivision's
 15 revitalization and reuse of a brownfield for noncommercial purposes,
 16 including conservation, preservation, and recreation, unless the
 17 nonprofit corporation causes or contributes to the release or threatened
 18 release of a regulated substance, in which case the nonprofit
 19 corporation is subject to IC 13-23 in the same manner and to the same
 20 extent as any other nongovernmental entity under IC 13-23.

21 ~~(f)~~ (g) "Owner" does not include a person that after June 30, 2009,
 22 meets, for purposes of the determination under IC 13-23-13 of liability
 23 for a release from an underground storage tank, the exemption criteria
 24 under Section 107(q) of CERCLA (42 U.S.C. 9607(q)) that apply for
 25 purposes of the determination of liability for a release of a hazardous
 26 substance.

27 ~~(g)~~ (h) "Owner" does not include a person that meets, for purposes
 28 of the determination under IC 13-23-13 of liability for a release from
 29 an underground storage tank, the exemption criteria under Section
 30 107(r) of CERCLA (42 U.S.C. 9607(r)) that apply for purposes of the
 31 determination of liability for a release of a hazardous substance, except
 32 that the person acquires ownership of the facility after June 30, 2009.

33 SECTION 4. IC 13-11-2-157 IS AMENDED TO READ AS
 34 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 157. (a) "Permit", for
 35 purposes of IC 13-15-4 and IC 13-18-10, means:

- 36 (1) a permit;
 37 (2) a license;
 38 (3) a registration;
 39 (4) a certificate; or
 40 (5) other type of authorization required before construction or
 41 operation;

42 that may be issued by the commissioner under pollution control laws



1 or environmental management laws.

2 (b) As used in IC 13-15-4-11 through IC 13-15-4-17, the term
3 includes:

4 (1) a permit; or

5 (2) a determination related to a permit;

6 that is described in IC 13-15-4-1.

7 SECTION 5. IC 13-11-2-157.2 IS ADDED TO THE INDIANA
8 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
9 **[EFFECTIVE JULY 1, 2017]: Sec. 157.2. "Permit holder", for**
10 **purposes of this chapter and IC 13-18-10, means a person that**
11 **applies for and receives a permit to construct or operate a confined**
12 **feeding operation.**

13 SECTION 6. IC 13-11-2-191, AS AMENDED BY P.L.127-2009,
14 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2017]: Sec. 191. (a) "Responsible party", for purposes of
16 IC 13-18-10, means any of the following:

17 (1) ~~An applicant.~~ **operator, as defined in section 148(a) of this**
18 **chapter.**

19 (2) ~~An officer, a corporation director, or a senior management~~
20 ~~official of any of the following that is an applicant (A) A~~
21 ~~corporation. (B) A partnership. (C) A limited liability company.~~
22 ~~(D) A business association.~~ **owner, as defined in section 150(a)**
23 **of this chapter.**

24 (3) **A permit holder.**

25 (4) **Any person or persons, as designated by a person listed in**
26 **subdivisions (1) through (3), to be in direct or responsible**
27 **charge of permit compliance at a confined feeding operation.**

28 (b) "Responsible party", for purposes of IC 13-19-4, means:

29 (1) an officer, a corporation director, or a senior management
30 official of a corporation, partnership, limited liability company, or
31 business association that is an applicant; or

32 (2) an individual, a corporation, a limited liability company, a
33 partnership, or a business association that owns, directly or
34 indirectly, at least a twenty percent (20%) interest in the
35 applicant.

36 (c) "Responsible party", for purposes of IC 13-20-6, means:

37 (1) ~~an officer, a corporation director, or a senior management~~
38 ~~official of a corporation, partnership, limited liability company, or~~
39 ~~business association that is an operator; or~~

40 (2) ~~an individual, a corporation, a limited liability company, a~~
41 ~~partnership, or a business association that owns, directly or~~
42 ~~indirectly, at least a twenty percent (20%) interest in the operator.~~



1 ~~(d)~~ (c) "Responsible party", for purposes of IC 13-24-2, has the
 2 meaning set forth in Section 1001 of the federal Oil Pollution Act of
 3 1990 (33 U.S.C. 2701).

4 ~~(e)~~ (d) "Responsible party", for purposes of IC 13-25-6, means a
 5 person:

6 (1) who:

7 (A) owns hazardous material that is involved in a hazardous
 8 materials emergency; or

9 (B) owns a container or owns or operates a vehicle that
 10 contains hazardous material that is involved in a hazardous
 11 materials emergency; and

12 (2) who:

13 (A) causes; or

14 (B) substantially contributes to the cause of;

15 the hazardous materials emergency.

16 SECTION 7. IC 13-11-2-247.6 IS ADDED TO THE INDIANA
 17 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 18 [EFFECTIVE JULY 1, 2017]: **Sec. 247.6. "Waste management**
 19 **system", for purposes of IC 13-18-10, means any approved method**
 20 **of managing manure or process wastewater at a confined feeding**
 21 **operation, including:**

22 **(1) manure storage facilities;**

23 **(2) manure transfer systems;**

24 **(3) manure treatment systems, such as a:**

25 **(A) constructed wetland;**

26 **(B) vegetative management system; or**

27 **(C) wastewater treatment system under a valid national**
 28 **pollutant discharge elimination system (NPDES) permit;**

29 **(4) feedlots;**

30 **(5) confinement buildings; or**

31 **(6) waste liquid handling, storage, and treatment systems.**

32 SECTION 8. IC 13-18-10-1 IS REPEALED [EFFECTIVE JULY 1,
 33 2017]. **Sec. 1: (a) A person may not start:**

34 **(1) construction of a confined feeding operation; or**

35 **(2) expansion of a confined feeding operation that increases:**

36 **(A) animal capacity; or**

37 **(B) manure containment capacity; or**

38 **(C) both;**

39 without obtaining the prior approval of the department.

40 **(b) A person may not operate a confined feeding operation without**
 41 **obtaining the prior approval of the department.**

42 SECTION 9. IC 13-18-10-1.1 IS ADDED TO THE INDIANA



1 CODE AS A NEW SECTION TO READ AS FOLLOWS
 2 [EFFECTIVE JULY 1, 2017]: **Sec. 1.1. (a) A person must obtain a**
 3 **permit to:**

4 (1) **construct; and**

5 (2) **operate;**

6 **a confined feeding operation.**

7 (b) **A permit holder must obtain approval from the department**
 8 **before:**

9 (1) **constructing a new manure storage facility; or**

10 (2) **expanding a manure storage facility.**

11 **The approval may be in the form of a new permit or a permit**
 12 **amendment, in accordance with this section and rules adopted by**
 13 **the board.**

14 (c) **A permit amendment is required before either of the**
 15 **following:**

16 (1) **Construction of a new manure storage facility to replace**
 17 **an existing manure storage facility if the construction would**
 18 **not increase the manure storage capacity of the confined**
 19 **feeding operation.**

20 (2) **A proposed change to a confined feeding operation that**
 21 **would:**

22 (A) **increase manure volume by more than ten percent**
 23 **(10%); or**

24 (B) **decrease the size of a manure storage facility by more**
 25 **than ten percent (10%).**

26 (d) **Before a permit holder makes a change to a confined feeding**
 27 **operation not described in subsection (c), the permit holder must**
 28 **submit to the department a facility change notification concerning**
 29 **the proposed change.**

30 (e) **Any change to a confined feeding operation that reduces the**
 31 **number of days of manure storage required under the rules in**
 32 **effect when the most recent permit was issued for the confined**
 33 **feeding operation must require the construction of additional**
 34 **manure storage.**

35 SECTION 10. IC 13-18-10-1.4, AS AMENDED BY P.L.126-2012,
 36 SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 JULY 1, 2017]: **Sec. 1.4. (a) Subject to subsection (b), An application**
 38 **for approval a permit for a new confined feeding operation required**
 39 **under section 1.1 of this chapter or a request for a transfer of**
 40 **ownership of an existing confined feeding operation must include**
 41 **for each responsible party the a disclosure statement referred to in**
 42 **subsection (c) if either or both any of the following apply:**



1 (1) State or federal officials, at any time within the five (5) years
 2 before the date on which the permit application or ownership
 3 transfer request is submitted, alleged that the a person who
 4 would be a responsible party with respect to the confined
 5 feeding operation committed acts or omissions that constituted
 6 a material violation of state or federal environmental law.

7 (2) Foreign officials, at any time within the five (5) years before
 8 the date on which the permit application or ownership
 9 transfer request is submitted, alleged that the a person who
 10 would be a responsible party with respect to the confined
 11 feeding operation committed acts or omissions that (A)
 12 constituted a material violation of foreign environmental law. and
 13 (B) would have constituted a material violation of state or
 14 federal environmental law if the act or omission had occurred
 15 in the United States.

16 (3) An administrative, civil, or criminal enforcement action
 17 filed in the United States or a foreign country alleging a
 18 violation of environmental law by a person who would be a
 19 responsible party with respect to the confined feeding
 20 operation is pending.

21 (b) Subsection (a):

22 (1) applies only if the acts or omissions alleged under subsection
 23 (a)(1) or (a)(2) presented a substantial endangerment to human
 24 health or the environment; and

25 (2) does not apply to a renewal of an approval under section 1 of
 26 this chapter that does not involve construction or expansion as
 27 described in section 1 of this chapter.

28 (c) (b) A responsible party referred to in subsection (a) must make
 29 reasonable efforts to provide complete and accurate information to the
 30 department in a disclosure statement that includes required under
 31 subsection (a), including the following:

32 (1) The name and business address of the responsible party.

33 (2) A description of the responsible party's experience in
 34 managing the environmental aspects of the type of facility that
 35 will be managed under the permit or ownership transfer
 36 request.

37 (3) A description of all pending administrative, civil, or criminal
 38 enforcement actions filed in the United States against the
 39 responsible party alleging any acts or omissions that (A)
 40 constitute a material violation of state or federal environmental
 41 law. and

42 (B) present a substantial endangerment to human health or the



- 1 environment.
- 2 (4) A description of all pending administrative, civil, or criminal
- 3 enforcement actions filed in a foreign country against the
- 4 responsible party alleging any acts or omissions that ~~(A)~~
- 5 constitute a ~~material~~ violation of foreign environmental law.
- 6 ~~(B) would have constituted a material violation of state or~~
- 7 ~~federal environmental law if the act or omission on which the~~
- 8 ~~action is based had occurred in the United States; and~~
- 9 ~~(C) present a substantial endangerment to human health or the~~
- 10 ~~environment.~~
- 11 (5) A description of all finally adjudicated or settled
- 12 administrative, civil, or criminal enforcement actions in the
- 13 United States resolved against the responsible party within the
- 14 five (5) years that immediately precede the date of the application
- 15 involving acts or omissions that ~~(A)~~ constitute a ~~material~~ violation
- 16 of federal or state environmental law. ~~and~~
- 17 ~~(B) present a substantial endangerment to human health or the~~
- 18 ~~environment.~~
- 19 (6) A description of all finally adjudicated or settled
- 20 administrative, civil, or criminal enforcement actions in a foreign
- 21 country resolved against the responsible party within the five (5)
- 22 years that immediately precede the date of the application
- 23 involving acts or omissions that ~~(A)~~ constitute a ~~material~~ violation
- 24 of foreign environmental law.
- 25 ~~(B) would have constituted a material violation of state or~~
- 26 ~~federal environmental law if the act or omission on which the~~
- 27 ~~action is based had occurred in the United States; and~~
- 28 ~~(C) present a substantial endangerment to human health or the~~
- 29 ~~environment.~~
- 30 (7) Identification of all state, federal, or foreign environmental
- 31 permits ~~(A)~~ applied for by the responsible party that were denied.
- 32 or
- 33 ~~(B) previously held by the responsible party that were revoked.~~
- 34 ~~(d) (c) A disclosure statement submitted under subsection (c): this~~
- 35 **section:**
- 36 (1) must be executed under oath or affirmation; and
- 37 (2) is subject to the penalty for perjury under IC 35-44.1-2-1.
- 38 ~~(e) (d) The department may investigate and verify the information~~
- 39 ~~set forth in a disclosure statement submitted under this section.~~
- 40 SECTION 11. IC 13-18-10-1.9 IS REPEALED [EFFECTIVE JULY
- 41 1, 2017]. ~~Sec. 1-9: (a) This section applies:~~



1 (1) to a confined feeding operation for which a person is required
 2 to submit an application for approval under section † of this
 3 chapter if an application for approval under section † of this
 4 chapter submitted with respect to the confined feeding operation
 5 was not approved by the department before May 12, 2009; and
 6 (2) notwithstanding the effective date of the addition or
 7 amendment by P.L.127-2009 of the provisions listed in subsection
 8 (b)(1) through (b)(8):

9 (b) The following, as added or amended by P.L.127-2009, effective
 10 July 1, 2009, apply to a confined feeding operation described in
 11 subsection (a)(1) in the same manner as if they had been in effect on
 12 the date on which the application was submitted with respect to the
 13 confined feeding operation under section † of this chapter:

- 14 (1) IC 13-11-2-8.
 15 (2) IC 13-11-2-40.
 16 (3) IC 13-11-2-191.
 17 (4) Section † of this chapter.
 18 (5) Section 2 of this chapter.
 19 (6) Section 2.1 of this chapter.
 20 (7) Section 2.2 of this chapter.
 21 (8) Section 4 of this chapter.

22 SECTION 12. IC 13-18-10-2, AS AMENDED BY P.L.199-2014,
 23 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2017]: Sec. 2. (a) **An application for an approval Except as**
 25 **provided in subsection (g), a permit application required** under
 26 section † 1.1 of this chapter must be submitted on a form provided by
 27 the department. **An applicant must submit the completed application**
 28 **form to the department together with The following must be submitted**
 29 **with a complete application:**

- 30 (1) Plans and specifications for the design and operation of
 31 **manure treatment and control facilities: waste management**
 32 **systems.**
 33 (2) A manure management plan that outlines procedures for the
 34 following:
 35 (A) Soil testing.
 36 (B) Manure testing.
 37 (3) Maps of manure application areas.
 38 (4) Supplemental information that the department requires,
 39 including the following:
 40 (A) General features of topography.
 41 (B) Soil types.
 42 (C) Drainage course.



- 1 (D) Identification of nearest streams, ditches, and lakes.
 2 (E) Location of field tiles.
 3 (F) Location of land application areas.
 4 (G) Location of manure treatment facilities.
 5 (H) Farmstead plan, including the location of water wells on
 6 the site.
- 7 (5) A fee of one hundred dollars (\$100). The department shall
 8 refund the fee if the department does not make a determination in
 9 accordance with the time period established under section 2.1 of
 10 this chapter.
- 11 (b) ~~An applicant~~ **A person** who applies for ~~an approval a permit~~
 12 under section ~~† 1.1~~ of this chapter shall, not more than ten (10)
 13 working days after submitting the application, make a reasonable effort
 14 to provide **written** notice under this subsection:
- 15 (1) to the county executive of the county in which the confined
 16 feeding operation is to be located or expanded; and
 17 (2) to each owner and each occupant of land of which any part of
 18 the boundary is one-half (1/2) mile or less from the following:
- 19 (A) Any part of the proposed footprint of either or both of the
 20 following to be located on the land on which the confined
 21 feeding operation is to be located:
- 22 (i) A livestock or poultry production structure.
 23 (ii) A permanent manure storage facility.
- 24 (B) Any part of the proposed footprint of either or both of the
 25 following to be located on the land on which the confined
 26 feeding operation is to be expanded:
- 27 (i) A livestock or poultry production structure.
 28 (ii) ~~The expanded area of a livestock or poultry production~~
 29 ~~structure.~~ **manure storage facility.**
- 30 (c) The notice **provided under subsection (b):**
- 31 (1) ~~must be sent by mail, be in writing,~~ include:
- 32 (A) the date on which the application was submitted to the
 33 department; and ~~include~~
- 34 (B) a brief description of the subject of the application; **and**
 35 (2) **may be transmitted by mail or electronic mail.**
- 36 The applicant shall pay the cost of complying with this subsection. The
 37 applicant shall submit an affidavit to the department that certifies that
 38 the applicant has complied with this subsection.
- 39 ~~(e)~~ (d) A person must submit an application for the renewal of ~~an~~
 40 ~~approval a permit~~ to:
- 41 (1) operate a confined feeding operation; or



- 1 (2) complete construction or expansion of a confined feeding
 2 operation;
 3 at least thirty (30) days prior to the expiration of the existing ~~approval~~
 4 **permit**. The construction standards that apply to a renewal application
 5 under this subsection shall be the standards in place under rules
 6 adopted by the board at the time that the original ~~approval~~ **permit** for
 7 construction or expansion of a confined feeding operation was issued.
- 8 ~~(d)~~ **(e)** A person who has received ~~approval~~ **a permit** to construct
 9 or expand a confined feeding operation under section ~~1.1~~ **1.1** of this
 10 chapter and has not begun construction or expansion within thirty (30)
 11 days of the expiration of the ~~approval~~ **permit** must:
- 12 (1) submit a renewal application for construction or expansion at
 13 least thirty (30) days prior to the expiration of the ~~approval~~;
 14 **permit**; and
 15 (2) comply with the requirements of subsection (b).
- 16 The construction standards that apply to a renewal application under
 17 this subsection shall be the standards in place under rules adopted by
 18 the board at the time that the renewal application is submitted.
- 19 ~~(e)~~ **(f)** The department shall approve the construction or expansion
 20 and the operation of the manure management system of the confined
 21 feeding operation if the commissioner determines that the ~~applicant~~
 22 ~~meets the~~ requirements of:
- 23 (1) this chapter;
 24 (2) rules adopted under this chapter;
 25 (3) the water pollution control laws;
 26 (4) rules adopted under the water pollution control laws; and
 27 (5) policies and statements adopted under IC 13-14-1-11.5
 28 relative to confined feeding operations;
 29 **have been met.**
- 30 **(g) A request for a permit amendment required under section**
 31 **1.1 of this chapter must be submitted on a form provided by the**
 32 **department. The notification requirements of this section do not**
 33 **apply to a permit amendment.**
- 34 SECTION 13. IC 13-18-10-2.1, AS AMENDED BY P.L.199-2014,
 35 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2017]: Sec. 2.1. (a) The department:
- 37 (1) shall make a determination on an application submitted under
 38 section 2 of this chapter not later than ninety (90) days after the
 39 date the department receives the completed application, including
 40 all required supplemental information, unless the department and
 41 the applicant agree to a longer time; and



- 1 (2) may conduct any inquiry or investigation, consistent with the
 2 department's duties under this chapter, the department considers
 3 necessary before making a determination.
- 4 (b) If the department fails to make a determination on an application
 5 not later than ninety (90) days after the date the department receives
 6 the completed application, the applicant may request and receive a
 7 refund of an ~~approval~~ application fee ~~paid by the applicant~~, and the
 8 commissioner shall:
- 9 (1) continue to review the application;
 10 (2) approve or deny the application as soon as practicable; and
 11 (3) refund the ~~applicant's~~ application fee not later than twenty-five
 12 (25) working days after the receipt of the applicant's request.
- 13 (c) The commissioner may suspend the processing of an application
 14 and the ninety (90) day period described under this section if the
 15 department determines within thirty (30) days after the department
 16 receives the application that the application is incomplete and has
 17 ~~mailed~~ **provided a written** notice of deficiency to the applicant that
 18 specifies the parts of the application that:
- 19 (1) do not contain adequate information for the department to
 20 process the application; or
 21 (2) are not consistent with applicable law.
- 22 (d) The department may establish requirements in ~~an approval a~~
 23 **permit** regarding that part of the confined feeding operation that
 24 concerns manure handling and application to assure compliance with:
- 25 (1) this chapter;
 26 (2) rules adopted under this chapter;
 27 (3) the water pollution control laws;
 28 (4) rules adopted under the water pollution control laws; and
 29 (5) policies and statements adopted under IC 13-14-1-11.5
 30 relative to confined feeding operations.
- 31 (e) Subject to subsection (f), the commissioner may deny a
 32 application upon making either or both of the following findings:
- 33 (1) A responsible party intentionally misrepresented or concealed
 34 any material fact in either or both of the following:
- 35 (A) ~~An A permit~~ application for ~~approval~~ under section ~~† 1.1~~
 36 of this chapter.
 37 (B) A disclosure statement required by section 1.4 of this
 38 chapter.
- 39 (2) An enforcement action was resolved against a responsible
 40 party as described in either or both of the following:
- 41 (A) Section ~~† 1.4(c)(5)~~ **1.4(b)(5)** of this chapter.
 42 (B) Section ~~† 1.4(c)(6)~~ **1.4(b)(6)** of this chapter.



1 (f) Before making a determination to approve or deny an
2 application, the commissioner must consider the following factors:

3 (1) The nature and details of the acts attributed to the responsible
4 party.

5 (2) The degree of culpability of the responsible party.

6 (3) The responsible party's cooperation with the state, federal, or
7 foreign agencies involved in the investigation of the activities
8 involved in actions referred to in section ~~1.4(c)(5)~~ **1.4(b)(5)** and
9 ~~1.4(c)(6)~~ **1.4(b)(6)** of this chapter.

10 (4) The responsible party's dissociation from any other persons or
11 entities convicted in a criminal enforcement action referred to in
12 section ~~1.4(c)(5)~~ **1.4(b)(5)** and ~~1.4(c)(6)~~ **1.4(b)(6)** of this chapter.

13 (5) Prior or subsequent self-policing or internal education
14 programs established by the responsible party to prevent acts,
15 omissions, or violations referred to in section ~~1.4(c)(5)~~ **1.4(b)(5)**
16 and ~~1.4(c)(6)~~ **1.4(b)(6)** of this chapter.

17 (g) Except as provided in subsection (h), in taking action under
18 subsection (e), the commissioner must make separately stated findings
19 of fact to support the action taken. The findings of fact must **include:**

20 (1) ~~include~~ a statement of ultimate fact; and

21 (2) ~~be accompanied by a concise~~ statement of the underlying
22 ~~basic~~ facts of record to support the findings.

23 (h) If the commissioner denies an application under subsection (e),
24 the commissioner is not required to explain the extent to which any of
25 the factors set forth in subsection (f) influenced the denial.

26 (i) The department may amend ~~an approval under section 1 of this~~
27 ~~chapter~~ or revoke ~~an approval a permit~~ under section ~~1~~ **1.1** of this
28 chapter:

29 (1) for failure to comply with:

30 (A) this chapter;

31 (B) rules adopted under this chapter;

32 (C) the water pollution control laws; or

33 (D) rules adopted under the water pollution control laws; and

34 (2) as needed to prevent discharges of manure into the
35 environment that pollute or threaten to pollute the waters of the
36 state.

37 SECTION 14. IC 13-18-10-2.2, AS AMENDED BY P.L.199-2014,
38 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
39 JULY 1, 2017]: Sec. 2.2. (a) Not more than thirty (30) days after the
40 completion of construction or expansion of a confined feeding
41 operation, the ~~applicant~~ **permit holder** shall execute and send to the



1 department an affidavit that affirms under penalties of perjury that the
2 confined feeding operation:

- 3 (1) was constructed or expanded; and
4 (2) will be operated;

5 in accordance with the requirements of the department's approval.

6 (b) ~~An approval~~ **A permit** to construct or expand a confined feeding
7 operation shall remain in effect as the operating ~~approval~~ **permit** for
8 the duration of the permit term if construction or expansion is
9 completed prior to the end of the permit term under which the confined
10 feeding operation was constructed or expanded.

11 SECTION 15. IC 13-18-10-3 IS REPEALED [EFFECTIVE JULY
12 1, 2017]. ~~Sec. 3: This chapter, including requirements established in a~~
13 ~~department approval under section 2 of this chapter, may be enforced~~
14 ~~under IC 13-30-3 or IC 13-14-2-6.~~

15 SECTION 16. IC 13-18-10-5 IS REPEALED [EFFECTIVE JULY
16 1, 2017]. ~~Sec. 5: The department may seek injunctive relief under this~~
17 ~~chapter.~~

18 SECTION 17. IC 13-18-10-6, AS AMENDED BY P.L.137-2007,
19 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
20 JULY 1, 2017]: Sec. 6. **(a) This chapter, including requirements in**
21 **a permit issued under this chapter, may be enforced under**
22 **IC 13-30-3 or IC 13-14-2-6.**

23 **(b)** A person who violates this chapter is subject to the penalties
24 imposed by the following:

- 25 (1) IC 13-30-4.
26 (2) IC 13-30-5.
27 (3) IC 13-30-8.

28 In addition, a person who violates this chapter may be subject to
29 criminal prosecution under IC 13-30-10.

30 **(c) The department may seek injunctive relief under this**
31 **chapter.**

32 SECTION 18. IC 13-23-13-14, AS AMENDED BY P.L.159-2011,
33 SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
34 JULY 1, 2017]: Sec. 14. For purposes of IC 13-11-2-148(e),
35 ~~IC 13-11-2-150(b), and IC 13-11-2-150(c), and IC 13-11-2-150(d),~~ a
36 person that is a lender and that holds evidence of ownership primarily
37 to protect a security interest in an underground storage tank shall be
38 considered to participate in management (as defined in
39 IC 13-11-2-151.2) of the underground storage tank only if, while the
40 borrower is still in possession of the underground storage tank
41 encumbered by the security interest, the person:



- 1 (1) exercises decision making control over the environmental
 2 compliance related to the underground storage tank such that the
 3 person has undertaken responsibility for the hazardous substance
 4 handling or disposal practices related to the underground storage
 5 tank; or
 6 (2) exercises control at a level comparable to that of a manager of
 7 the underground storage tank such that the person has assumed or
 8 manifested responsibility:
- 9 (A) for the overall management of the underground storage
 10 tank encompassing day to day decision making with respect to
 11 environmental compliance; or
 12 (B) over all or substantially all of the operational functions (as
 13 distinguished from financial or administrative functions) of the
 14 underground storage tank other than the function of
 15 environmental compliance.
- 16 SECTION 19. IC 13-23-13-16, AS ADDED BY P.L.221-2007,
 17 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 18 JULY 1, 2017]: Sec. 16. (a) A political subdivision or unit of federal
 19 or state government that acquired ownership or control of an
 20 underground storage tank on a brownfield by any of the means listed
 21 in ~~IC 13-11-2-150(e)~~ **IC 13-11-2-150(d)** and IC 13-11-2-151(b) may
 22 undertake any activity in conjunction with:
- 23 (1) investigation or remediation of hazardous substances,
 24 petroleum, and other pollutants associated with a brownfield,
 25 including complying with land use restrictions and institutional
 26 controls; or
 27 (2) monitoring or closure of an underground storage tank;
 28 without being considered as contributing to the existing release or
 29 threatened release of a regulated substance on, in, or at the brownfield
 30 unless existing contamination on the brownfield is exacerbated due to
 31 gross negligence or intentional misconduct by the political subdivision
 32 or unit of federal or state government.
- 33 (b) For purposes of subsection (a), reckless, willful, or wanton
 34 misconduct constitutes gross negligence.

